Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling that USA	)	
Datanet Corp. Is Liable for Originating	)	WC Docket No. 05-276
Interstate Access Charges When It Uses	)	
Feature Group A Dialing To Originate	)	
Long Distance Calls	)	

COMMENTS OF THE
VERIZON TELEPHONE COMPANIES[1]

The Commission should grant Frontier's petition,[2] and declare that USA Datanet owes access charges when it uses the PSTN to originate ordinary phone-to-phone long distance calls, regardless of whether the call is converted into IP format for some portion of its transmission.

The Commission has already held that the type of long distance service at issue here is "a telecommunications service upon which interstate access charges may be assessed."[3] In that case, AT&T sought a declaratory ruling that it was exempt from access charges on ordinary long distance calls that originated and terminated on the PSTN. According to AT&T, it was exempt because, when the call reached AT&T's network, it converted the call from its existing format into an IP format, transported the call over AT&T's Internet backbone, then converted the call back from IP format for delivery to the called party. *Id.* The Commission rejected AT&T's claim. It determined that the calls underwent no net protocol conversion and that the IP transport

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[1] The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to these Comments.

[2] Petition for Declaratory Ruling that USA Datanet Corp. Is Liable for Originating Interstate Access Charges When It Uses Feature Group A Dialing To Originate Long Distance Calls, WC Docket No. 05-276 (filed November 23, 2005) ("*Frontier Petition*").

[3] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt From Access Charges*, 19 FCC Rcd 7457, ¶¶ 1, 19 (2004) ("*AT&T IP-in-the-Middle Order*").

provided no enhanced functionality to end users. As a result, these ordinary long distance calls constituted a telecommunications service and were subject to access charges. *Id.*

The calls at issue here match the Commission's description of the service provided by AT&T – they originate on the PSTN from ordinary CPE, they are converted into IP format for transport, then converted back and terminated on the PSTN. The only variation here is that the calls originate from ILEC end users who dial a seven-digit number (in this case provided by a CLEC), obtain a second dial tone, and then dial the number of the person they are calling – in other words, Feature Group A access. That is a distinction without a difference. USA Datanet is transporting ordinary long distance calls that originate on the PSTN in one exchange and terminate on the PSTN in another exchange. The calls are transmitting information "between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." They are, therefore, telecommunications, *see* 47 U.S.C. § 153(43), and the service USA Datanet offers is a telecommunications service. *Id.* at § 153(46). The fact that USA Datanet may convert the call into IP format for some part of the transmissions does not transform its service into an "information" service – the calls "undergo[ ] no net protocol conversion," and there is no indication that USA Datanet's service "provides [any] enhanced functionality to end users due to [its] use of IP technology." *AT&T IP-in-the-Middle Order*, ¶¶ 1, 17.

USA Datanet's use of IP format in transporting the calls does not make it an information services provider, and does not transform the Feature Group A access used to originate the calls into "Internet access." The Commission made clear in the *AT&T IP-in-the-Middle Order* that "[t]o the extent that protocol conversions associated with AT&T's specific service take place

within its network, they appear to be 'internetworking' conversions, which the Commission has found to be telecommunications services." *Id.* ¶ 12. The same result applies here.

But even if the calls did involve a net protocol conversion, access charges would still apply. The Commission has squarely held that services that involve a so-called "net protocol conversion" do not fall within the scope of the ISP exemption when that conversion is "necessitated by the introduction" of new technology on a "piecemeal" basis in order to maintain compatibility with the existing network and equipment.[4] Indeed, the paradigm example of such basic protocol conversion service – "a carrier-provided end office analog to digital conversion that permits an analog terminal to be accommodated by a network that is evolving to digital status,"[5] is directly analogous to IP-in-the-middle traffic. Just as the network previously evolved from analog to digital, the network today is evolving from circuit-switched to IP technology, and carrier-provided protocol conversions are needed to permit IP terminals and equipment and TDM terminals and equipment to communicate with one another.

The Commission also has made clear that the use of new packet switching transmission protocols, of which Internet protocol is one type, likewise does not bring services within the scope of the exemption, despite the fact that a net protocol conversion is necessarily involved whenever a customer of a packet-switched service exchanges traffic with a customer of a circuit-

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[4] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 12 FCC Rcd 2297, ¶ 2 n.6 (1997) (citations omitted).

[5] *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3072, ¶ 70 (1987).

switched service.[6] And it also has made clear that if a service that uses the local telephone network is not subject to the ESP exemption, access charges apply.[7]

USA Datanet's service does not fit within the stated rationale for the ESP exemption. The Commission has justified the exemption on the theory that ESPs use the local network in a way that is analogous to local businesses – to communicate with and provide enhanced services to their own customers – rather than as a conduit for a voice telephone call between two end user customers. Accordingly, "it is not clear that ISPs still use the [public switched access] network in a way that is analogous to the way IXCs use it."[8] Here, in contrast, USA Datanet *does* use the PSTN "in a manner analogous to IXCs" – to provide a transmission path between two people who wish to speak to one another. Accordingly, the ESP exemption is not applicable and access charges apply under the Commission's rules.

The fact that USA Datanet's long distance calls originate from ILEC customers using seven-digit dialing, and are then handed to a CLEC which hands the calls to USA Datanet for transport does not lead to a different result. USA Datanet is an interexchange carrier "that use[s] local exchange switching facilities for the provision of interstate or foreign telecommunications

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[6] *See Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling that AT&T's InterSpan Frame Relay Service Is a Basic Service*, 10 FCC Rcd 13717, ¶¶ 33-41 (1995).

[7] *AT&T IP-in-the-Middle Order*, ¶ 4 n.13. There, the Commission explained that there are "three categories of protocol processing services that would be treated as basic services." Namely, "protocol processing: (1) involving communications between an end user and the network itself . . . (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking . . . . The first and third identified categories of processing services result in no net protocol conversion to the end user." *Id.* (citations omitted). Plainly, then, the second category – the one relevant here – *does* involve a net protocol conversion but nonetheless is considered a basic telecommunications service, not an information service.

[8] Brief for Federal Communications Commission at 71, *Southwestern Bell Tel. Co. v. FCC*, No. 97-2618 (8th Cir. Dec. 16, 1997) (internal quotations omitted); *see also Access Charge Reform*, 12 FCC Rcd 15982, ¶¶ 344-48 (1997).

services." 47 C.F.R. § 69.5(b). As discussed above, the services USA Datanet provides here are "telecommunications services." USA Datanet originates these services using the ILEC's local switching facilities. Whether it does so directly or indirectly through a CLEC, the call is an interstate call for which interstate access charges are due. USA Datanet cannot avoid the fact that it is using local exchange switching facilities to provide a telecommunications service simply by contracting with a CLEC to receive the calls from the ILEC over local interconnection trunks and hand them to USA Datanet for transport. That ruse does not alter the nature of the originating traffic.

When ILEC local exchange switching facilities are used to originate interstate interexchange traffic, the ILEC must assess interstate switched access charges for originating interstate calls. The Commission's access charge rules prescribe the rate levels that local exchange carriers are permitted to charge,[9] require local exchange carriers to file tariffs reflecting those rates,[10] prescribe the individual rate elements that local exchange carriers must charge,[11] and require that local exchange carriers assess those charges on "interexchange carriers that use local exchange switching facilities for the provision of interstate . . . telecommunications services."[12] The LECs' existing tariffs also require the payment of access charges to originate and terminate all interexchange calls, regardless of the provider. *See, e.g.,* Verizon Telephone Companies, Tariff F.C.C. No. 1, Section 6-Switched Access Service, at 6.1 ("Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's facilities, and to terminate calls from a customer's facilities to an end user's premises in the

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9 *See* 47 C.F.R. § 69.1 (providing that rates are governed by price cap rules).

10 *See id.* § 69.3.

11 *See id.* § 69.5.

12 *See id.*

LATA where it is provided"). Accordingly, access charges apply to the interexchange traffic at issue here.

According to Frontier, it seeks originating access charges only for the part of originating access service that it provides, and it has not billed USA Datanet for, *e.g.*, the tandem switching functions provided by the CLEC. *Frontier Petition* at 2, 8-9. This petition therefore presents a situation where two LECs are jointly providing originating access for interstate interexchange calls. In such cases, the two LECs share the access charges to pay for the services each provides. It appears that USA Datanet and the CLEC have entered into a contractual arrangement for the services the CLEC provides to USA Datanet. But that arrangement does not alter the fact that Frontier also provides originating access to USA Datanet for the long distance service it offers. Frontier is entitled to collect access charges for those originating access services it provides.

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For the foregoing reasons, the Commission should grant Frontier's petition.

Respectfully submitted,

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January 9, 2006

ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

For the purposes of this filing the Verizon telephone companies are the following local exchange carriers affiliated with Verizon Communications Inc.:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.